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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**
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12 AARON KOZACKI,

13 Plaintiff,

14 vs.

15 NATIONAL CREDIT ADJUSTERS.
16 LLC,

Defendant.

CASE NO. 13cv1025-WQH-
WMC

ORDER

17 HAYES, Judge:

18 On April 30, 2013, Plaintiff Aaron Kozacki initiated this action by filing the
19 Complaint. (ECF No. 1). On January 10, 2014, Defendant responded by filing an
20 Answer. (ECF No. 5). On March 14, 2014, Plaintiff filed a Motion for Leave to File
21 a First Amended Complaint, accompanied by a proposed first amended complaint.
22 (ECF No. 15). On March 28, 2014, Defendant filed an opposition to the Motion for
23 Leave to File a First Amended Complaint. (ECF No. 16).

24 **I. Contentions of the Parties**

25 Plaintiff contends that the motion is based on “an inadvertent omission made in
26 drafting the original Complaint....” *Id.* at 1. Specifically, Plaintiff states that:

27 ... although actual damages were listed as entitlements to Plaintiff for
28 Defendant’s violations pursuant to 15 U.S.C. § 1692k(a)(1) under the
federal Fair Debt Collection Practices Act (“FDCPA”) and Cal. Civ. Code

§ 1788.30(a) under the California Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”) in the Causes of Action section of the Complaint, actual damages were not formally requested in the Prayer for Relief section of the Complaint.

Id. at 1-2. Plaintiff requests leave to amend the Complaint in order to “... add a more formal request for actual damages in the Prayer for Relief section of the Complaint... and [to] add further details to the previously pled events in the Complaint. Plaintiff does not wish to [add] [] additional causes of action, only to clarify the allegations for Defendant and the Court.” *Id.* at 4.

Defendant contends that because Plaintiff did not accept Defendant’s Rule 68 Offer of Judgment, “this Court no longer has subject matter jurisdiction over this case.” *Id.* at 2. Defendant contends that “... not only should this motion be denied, but the case should be dismissed.” *Id.* Defendant further contends that “Plaintiff has had nearly a year to discover the defects in his pleadings and amend his Complaint accordingly.... Notably, Plaintiff’s Motion is devoid of any explanation for the delay, which Plaintiff has the burden to establish.” *Id.* at 4.

Plaintiff contends in his reply brief that after receiving Defendant’s Offer of Judgment, Plaintiff’s counsel “discovered the error made ... in omitting a prayer for actual damages and immediately reached out to Defendant’s counsel for a stipulation to amend.” (ECF No. 18 at 4). Plaintiff contends that he “waited to file this motion in the hopes that the case would be resolved at the Early Neutral Evaluation.” *Id.*

II. Discussion

A. Jurisdiction

This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. § 1331, 15 U.S.C. § 1692(k), and 28 U.S.C. § 1367 for supplemental state claims. Defendant has failed to make any persuasive argument as to why this Court lacks jurisdiction.

B. Leave to Amend

Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given when justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with

1 extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th
 2 Cir. 2003) (quotation omitted). In determining whether to allow an amendment, a court
 3 considers whether there is “undue delay,” “bad faith,” “undue prejudice to the opposing
 4 party,” or “futility of amendment.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “Not
 5 all of the [*Foman*] factors merit equal weight.... [I]t is the consideration of prejudice
 6 to the opposing party that carries the greatest weight.” *Eminence Capital*, 316 F.3d at
 7 1052 (citation omitted). “The party opposing amendment bears the burden of showing
 8 prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187 (9th Cir. 1987).
 9 “Absent prejudice, or a strong showing of any of the remaining *Foman* factors, there
 10 exists a *presumption* under Rule 15(a) in favor of granting leave to amend.” *Eminence*
 11 *Capital*, 316 F.3d at 1052.

12 After review of the motion, the proposed first amended complaint, and the filings
 13 of the parties, the Court concludes that Defendant has not made a sufficiently strong
 14 showing of the *Foman* factors to overcome the presumption under Rule 15(a) in favor
 15 of granting leave to amend. *See Eminence Capital*, 316 F.3d at 1052. The Court will
 16 defer consideration of any challenge to the merits of the proposed first amended
 17 complaint until after the amended pleading is filed. *See Netbula v. Distinct Corp.*, 212
 18 F.R.D. 534, 539 (N.D. Cal. 2003) (“Ordinarily, courts will defer consideration of the
 19 challenges to the merits of a proposed amended pleading until after leave to amend is
 20 granted and the amended pleading is filed.”).

21 **III. Conclusion**

22 IT IS HEREBY ORDERED that the Motion for Leave to File a First Amended
 23 Complaint is GRANTED. (ECF No. 15). Plaintiff shall file the proposed first amended
 24 complaint attached to the motion within ten (10) days of the date of this Order.

25 DATED: May 2, 2014

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 27 **WILLIAM Q. HAYES**
 28 United States District Judge